

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

**DAVID LEE A. WILLIAMS,
Plaintiff,**

v.

Case No. 06C597

**DR. GABNER, MEDICAL FEDERATION,
and JOHN DOES,
Defendants.**

ORDER

Plaintiff David Lee A. Williams, who is proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis. By order dated May 19, 2006, plaintiff was ordered to forward to the clerk of court within 21 days (by June 9, 2006) the sum of \$4.20 as an initial partial filing fee. On September 5, 2006, with the initial partial filing fee still unpaid, I dismissed without prejudice plaintiff's case for failure to prosecute. Before me now is plaintiff's motion for reconsideration.

Plaintiff states that prison officials did not comply with plaintiff's request to release funds to the clerk of court and that plaintiff's sister failed to submit the partial filing fee on plaintiff's behalf as promised. I construe plaintiff's motion as a request for relief from the September 5, 2006, order under Federal Rule of Civil Procedure 60(b)(1). Under that rule, I may relieve plaintiff from my order due to mistake, inadvertence, surprise, or excusable neglect. "[T]he standard for review of a rejection of excusable neglect 'is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . the danger of prejudice to the [defendant], the length of the delay and its potential impact on judicial proceedings, the reasons for the delay, including whether it was

within the reasonable control of the movant, and whether the movant acted in good faith.””
Raymond v. Ameritech Corp., 442 F.3d 600, 606 (7th Cir. 2006) (quoting Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. P’ship, 507 U.S. 380, 395 (1993))

Plaintiff’s explanation for his failure to pay the initial partial filing fee satisfies the 60(b)(1) excusable neglect standard and clearly shows an intention to prosecute this action. Thus, I will reopen plaintiff’s case and grant him until October 16, 2006, to submit the initial partial filing fee of \$4.20. If this day approaches and plaintiff finds that he is still without sufficient funds, he may request that I allow him to proceed without payment of the initial partial filing fee.

Therefore,

IT IS ORDERED that plaintiff’s motion for reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that this action is **REINSTATED**.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 26 day of September, 2006.

/s _____
LYNN ADELMAN
District Judge